

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

MACA.No. 623 of 2003()

OPMV.908/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT/1ST RESPONDENT IN OP(MV).

**PRAMOD, AGED 27 YEARS,
S/O.THAMBAN, KUNNUPURATH HOUSE, KAYANADU,
ORRAMANA P.O. MUVATTUPUZHA.**

**BY ADV. SRI.T.KURIAKOSE PETER
SRI.ABRAHAM P.GEORGE**

RESPONDENTS - PETITIONER - RESPONDENT:

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- 1. GANGADHARAN, S/O.NARAYANAN,
ANNIKAVAYALIL HOUSE, KAYANADU,
OORAMANA PO, MUVATTUPUZHA.**
 - 2. VINOD, S/O.KUNAJAPPAN,
KODAMATTATHIL HOUSE, KAYANAD, OORAMANA P.O.
MUVATTUPUZHA.**
 - 3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
MUVATTUPUZHA.**

**BY ADV. SRI.PMM.NAJEEB KHAN
SRI.PEEYUS A.KOTTAM**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO.623 OF 2003

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Dated this the 22nd day of June, 2007

J U D G M E N T

First respondent in O.P(MV) No.908 of 1999 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha is the appellant. This appeal is filed challenging the award passed by the Tribunal by which the Tribunal had awarded an amount of Rs.12,390/- with 9% interest to the petitioner (first respondent herein). Tribunal directed the Insurer to pay the amount and then recover the same from the appellant, who is the owner of the vehicle.

2. Short facts necessary for the disposal of the appeal are as follows: First respondent met with an accident at about 6.30 p.m. on 21.11.1998. He filed the O.P. claiming compensation against the appellant, second respondent and Insurer. It was alleged that accident occurred due to the negligence of the second respondent, who was the driver of the vehicle. Though notice was issued on the appellant, he did not appear and contest the case. Driver also did not appear and contest. Insurer alone contested the case. It filed

a petition, I.A. No.2592 of 2000, calling upon the appellant to produce the driving licence. But the appellant did not produce the driving licence. The Tribunal found that the first respondent was entitled to get a compensation of Rs.12,390/- with 9% interest. The Tribunal directed the Insurer to pay the said amount and then recover the same from the appellant. Insurer had already paid the amount awarded to the first respondent.

3. The following questions arise for consideration.

(1) Whether the quantum of compensation awarded is legal and proper? and (2) Whether the finding of the Tribunal that there was violation of policy conditions and hence the Insurer can recover the compensation from the appellant after paying the same to the victim was correct?

4. Appellant did not file any written statement.

Relying on Exhibits A1 to A8, Tribunal found that the accident occurred due to the negligence of the second respondent. That is a finding of fact based on good evidence and I do not find any ground to interfere with the same. Tribunal awarded a sum of Rs.12,390/- as compensation. I have carefully gone through the award. I do not find any reason to interfere with

the quantum of compensation awarded. The compensation awarded by the Tribunal under different heads is very reasonable and it does not call for any interference.

5. The next question arising for consideration is whether the direction of the Tribunal to the Insurer to pay the amount awarded and then recover the same from the appellant is correct? Insurer had disputed its liability in the written statement. There is no material to show that the driver of the offending vehicle was possessed of a valid driving licence. Insurer had filed I.A. No.2592 of 2000 calling upon the owner and driver to produce the driving licence. In spite of the order for production of the driving licence, the same was not produced. So the Tribunal drew an adverse inference against the appellant and found that the Insurer can recover the amount awarded from the appellant after satisfying the award. I do not find any reason to interfere with the said finding of the Tribunal also. But considering the financial position of the appellant, I am of the view that reasonable time can be given to the appellant to pay off the amount due to the Insurer. It is submitted by the counsel for the appellant that appellant had deposited one half of the

amount awarded. The Insurer can withdraw the same. The appellant can be allowed to pay the balance amount due in six monthly instalments.

6. In the result, the appeal is allowed in part. The finding of the Tribunal that the Insurer is liable to pay the compensation awarded and then recover the same from the appellant is confirmed. Appellant shall pay the amount due to the Insurer in six equal monthly instalments. The first instalment shall be paid on or before 10.8.2007 and remaining instalments on or before 10th of the five succeeding months. If the appellant commits default in making repayment of two consecutive instalments, the Insurer can recover the amount due from the appellant in lump.

Interlocutory Application No.2269 of 2003 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

K. PADMANABHAN NAIR, J.

M.F.A.

J U D G M E N T

22ND JUNE, 2007